

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT **BECKLEY**

LEONA GIBSON
Plaintiff,

v.

Civil Action No. 5:19-cv-00091

COMMUNITY HEALTH SYSTEMS, INC.,
d/b/a ACCESSHEALTH ASSOCIATES OBGYN and
ROY ROGER WOLFE, JR., M.D., individually
Defendant.

COMPLAINT

NOW COMES the Plaintiff Leona Gibson and for her cause of action states the following:

PREFACE TO COMPLAINT

Pursuant to the provisions of the *West Virginia Medical Professional Liability Act*, W. Va. Code §55-7B-1 *et seq.*, plaintiffs have served, by certified mail, a Notice of Claim against each health care provider named in this Complaint. Accompanying that Notice of Claim were one or more Screening Certificates of Merit as are required under the *West Virginia Medical Professional Liability Act*. No individual, corporation, company or limited partnership upon whom a Notice of Claim and Screening Certificate of Merit were served have requested or demanded pre-suit mediation. More than thirty (30) days have elapsed since service of the Notices of Claim and Screening Certificates of Merit.

THE PARTIES

1. The Plaintiff, Leona Gibson is and was at all times relevant herein a citizen and resident of Beckley, Raleigh County, West Virginia.

2. Defendant, Roy Roger Wolfe, M.D. [hereinafter referred to as “ Dr. Wolfe”] is a pediatrician licensed to practice medicine in the State of West Virginia, and was at all times relevant herein practicing in and about Beckley, Raleigh County, West Virginia specifically caring for Leona Gibson, as a paying patient for a fee beginning on or about October 26, 2011 and continuing thereafter.

3. Defendant, Dr. Wolfe is an employee of the United States Government pursuant to the Public Health Service Act, codified at 42 U.S.C. § 233(g), (h), as amended by the Federally Supported Health Care Centers Assistance Act of 1992, as amended in 1995.

4. Defendant, Community Health Systems, Inc., d/b/a AccessHealth Associates in OBGYN, (hereinafter referred to as “*Access Health*”) is and was at all times relevant herein, a West Virginia corporation with offices and properties in Raleigh County, West Virginia, specifically providing care and treatment at its facility known as AccessHealth Associates OBGYN in Beckley, Raleigh County, West Virginia through its agents, servants, and/or employees, including Dr. Wolfe to Leona Gibson, as a paying patient for a fee beginning on or before October 26, 2011, and continuing thereafter. AccessHealth is an employee pursuant to the Public Health Service Act, codified at 42 U.S.C. § 233(g), (h), as amended by the Federally Supported Health Care Centers Assistance Act of 1992, as amended in 1995.

5. Plaintiff has exhausted all administrative remedies in compliance with the Federal Tort Claims Act, codified at 28 U.S.C. §§ 1346(b), 2671-2680 and 42 U.S.C. § 233.

FACTS

6. On or about October 26, 2011, Claimant, was presented to Access Health Association OBGYN and was seen by Dr. Wolfe for a yearly checkup. Dr. Wolfe prescribed her

Fosamax 70 to treat her osteopenia.

7. On or about December 1, 2016, Mrs. Gibson was seen at West Virginia University School of Dentistry with complaints of severe pain and exposed mandibular bone. At that time, she underwent a procedure in which the bone was conservatively debrided to facilitate granulation of mucosa. Dr. Cudney contacted Dr. Wolfe to recommend discontinue fosamax prescribed to Mrs. Gibson.

8. On or about January 9, 2017, and February 14, 2017, Mrs. Gibson returned to West Virginia University School of Dentistry for follow up after surgery she experienced slight increase in pain and discomfort. Mrs. Gibson was unable to wear her bottom dentures at that time.

9. On or about March 23, 2017, Mrs. Gibson presented to West Virginia University School of Dentistry again with complaints of worsening pain. According to the medical records the exposed bone on bilateral posterior manible has increased in size.

10. On April 12, 2017, Mrs. Gibson had a procedure for debridement of HA graft of mandible and recontouring of mandible performed by Dr. Cudney.

11. On or about June 6, 2017, Mrs. Gibson was seen at West Virginia University School of Dentistry with complaints of pain to lingual aspect of L mandible, reports area of more exposed bone to right mandible as well.

GENERAL ALLEGATIONS

12. On or about October 26, 2011, the defendants individually and/or by or through their agents, servants and/or employees, negligently cared for Leona Gibson.

13. The defendants, as characterized above, were careless, reckless, and negligent in their care and treatment of Mrs. Gibson, such negligence including, but not limited to:

- a. by negligently prescribing Fosamax to Mrs. Gibson for approximately five years causing severe pain, and several surgeries to correct the exposed mandibular bone and
- b. thereby causing her permanent injury; and
- c. were otherwise negligent.

14. The defendants, as characterized above, acted negligently, carelessly, recklessly, wantonly and with a total disregard for the welfare of Mrs. Gibson, in the care and treatment provided to her.

15. The negligence, carelessness, recklessness of the defendants, individually, jointly or severally, by or through their agents, servants, or employees, proximately caused Mrs. Gibson to have suffered severe pain and exposed mandibular bone causing permanent injury.

16. As a direct and proximate result of the negligence, carelessness, and recklessness of the defendants, jointly or severally, individually and/or by or through their agents, servants, or employees, such Defendants negligently prescribing Fosamax to Mrs. Gibson for approximately five years causing severe pain, and several surgeries to correct the expose mandibular bone, thereby proximately causing her to suffer severe pain and exposed bone.

17. The actions of the Defendants, as characterized above, was careless, reckless, willful, and wanton, and with a reckless disregard of risk of harm to Mrs. Gibson sufficient to allow the award of both compensatory and punitive damages.

GENERAL DAMAGES

18. As a consequence of the negligence of the Defendants, as characterized above, or any one of them, acting individually, jointly or severally, by or through their agents, servants, or

employees, such negligence resulting in permanent damage, Mrs. Gibson has sustained the following injuries:

- a. Medical expenses, past and future;
- b. Physical pain and suffering, past and future;
- c. Mental pain and suffering, past and future;
- d. Annoyance, embarrassment, humiliation and inconvenience, past and future; and
- e. Loss of enjoyment of life, past and future.

PRAYER

WHEREFORE, the Plaintiff, Leona Gibson demands judgment from Defendants, AccessHealth Associates OBGYN and Roy Roger Wolfe Jr., jointly or severally, individually and/or by or through their agents, servants, or employees, in this matter for compensatory damages for economic and non-economic losses, as allowable under the Medical Professional Liability Act, for punitive damages, plus an award of prejudgment and post-judgment costs, allowable fees,

LEONA GIBSON
By Counsel

/s/ Woody A. Trent
Woody Trent, Esquire
WV Bar No.8630
Richard D. Lindsay, M.D., J.D.
WV Bar No. 2216
Tabor Lindsay & Associates
Post Office Box 1269
Charleston, West Virginia 25325
304/344-5155
304/344-5188 Facsimile